

§ 109.3

marking, labeling, shipping documentation, hazard communications, etc.

Remove means to keep a package from entering the stream of transportation in commerce; to take a package out of the stream of transportation in commerce by physically detaining a package that was offered for transportation in commerce; or stopping a package from continuing in transportation in commerce.

Safe and expeditious means prudent measures or procedures designed to minimize delay.

Subpart B—Inspections and Investigations

§ 109.3 Inspections and Investigations.

(a) *General authority.* An Administrator may initiate an inspection or investigation to determine compliance with Federal hazardous material transportation law, or a regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto.

(b) *Inspections and investigations.* Inspections and investigations are conducted by designated agents of the Secretary who will, upon request, present their credentials for examination. Such an agent is authorized to:

(1) Administer oaths and receive affirmations in any matter under investigation.

(2) Gather information by any reasonable means, including, but not limited to, gaining access to records and property (including packages), interviewing, photocopying, photographing, and video- and audio-recording in a reasonable manner.

(3) Serve subpoenas for the production of documents or other tangible evidence if, on the basis of information available to the agent, the evidence is relevant to a determination of compliance with the Federal hazardous material transportation law, regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto. Service of a subpoena shall be in accordance with the requirements of the agent's operating administration

49 CFR Ch. I (10–1–12 Edition)

as set forth in 14 CFR 13.3 (Federal Aviation Administration); 49 CFR 209.7 (Federal Railroad Administration), 49 U.S.C. 502(d), 5121(a) (Federal Motor Carrier Safety Administration), and 49 CFR 105.45–105.55 (Pipeline and Hazardous Materials Safety Administration).

§ 109.5 Opening of packages.

(a) When an agent has an objectively reasonable and articulable belief that a package offered for or in transportation in commerce may contain a hazardous material and that such a package does not otherwise comply with this chapter, the agent may—

(1) Stop movement of the package in transportation and gather information from any person to learn the nature and contents of the package;

(2) Open any overpack, outer packaging, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package and examine the inner packaging(s) or packaging components.

§ 109.7 Removal from transportation.

An agent may remove a package and related packages in a shipment or a freight container from transportation in commerce for up to forty-eight (48) hours when the agent has an objectively reasonable and articulable belief that the packages may pose an imminent hazard. The agent must record this belief in writing as soon as practicable and provide written notification stating the reason for removal to the person in possession.

§ 109.9 Transportation for examination and analysis.

(a) An agent may direct a package to be transported to a facility for examination and analysis when the agent determines that:

(1) Further examination of the package is necessary to evaluate whether the package conforms to subchapter C of this chapter;

(2) Conflicting information concerning the package exists; or

(3) Additional investigation is not possible on the immediate premises.

(b) In the event of a determination in accordance with paragraph (a) of this section, an agent may: